Supreme Court, U.S.
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No. 02-1343

IN THE

Supreme Court of the United States

ENGINE MANUFACTURERS ASSOCIATION AND WESTERN STATES PETROLEUM ASSOCIATION,

Petitioners,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly determined that Section 209(a) of the Clean Air Act, 42 U.S.C. § 7543(a), does not preempt air quality rules adopted by the South Coast Air Quality Management District because those rules, which require fleet operators purchasing new motor vehicles to purchase the least polluting vehicles from among those previously certified for sale in California, are not a "standard relating to the control of emissions from new motor vehicles"?

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Respondents South Coast Air Quality Management District, *et al.* and Respondents Natural Resources Defense Council, *et al.* (collectively, "Respondents"), respectfully request that this Court deny the Petition for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit in this case.

STATEMENT OF THE CASE

The Petition for a Writ of Certiorari filed by Petitioners Engine Manufacturers Association and Western States Petroleum Association presents no issues that warrant this Court's review. The "Fleet Rules" that Petitioners challenge were enacted to reduce harmful emissions from certain motor vehicle fleets and plainly further the federal Clean Air Act's core purpose—to reduce pollution. Moreover, the Fleet Rules impose no requirements on manufacturers; instead, they only require fleet operators, when purchasing new vehicles, to choose from among the least polluting vehicles already certified for sale by the State of California and the federal government. Consequently, as the Ninth Circuit and district court correctly found, the rules do not establish a preempted "standard relating to the control of emissions from new motor vehicles" within the meaning of Section 209(a) of the Clean Air Act, 42 U.S.C. § 7543(a).

Petitioners have invented a conflict in the decisions of the circuit courts of appeals that does not exist. *See* Petition for a Writ of Certiorari (hereafter "Pet.") at 3. As recognized in the opinion of the district court, which was affirmed and adopted by the court of appeals (Judges Goodwin, Rymer, and McKeown), the cases that Petitioners cite as creating the alleged conflict are plainly distinguishable from the present case, and thus are not in conflict with it. Pet. App. 21a-23a.

Petitioners' other arguments fare just as poorly. They cite *Morales v. Trans World Airlines*, 504 U.S. 374 (1992), for the proposition that the lower courts erred in refusing to broadly construe the preemption provisions of the Clean Air Act. Pet. at 3, 19. Petitioners, however, ignore later opinions of this Court that sharply retreat from the holding of *Morales*. Furthermore, Petitioners are simply incorrect in asserting (Pet. at 18) that the Clean Air Act expansively preempts *all* state and local regulations that reduce emissions from motor vehicles. To the contrary, and as recognized by the lower courts in this case (Pet. App. 23a), under the Clean Air Act, states and local governments expressly retain broad authority to regulate stationary and mobile sources of air pollution. This authority includes the power to adopt and enforce rules requiring fleet operators to acquire lower emitting motor vehicles from among those already certified for sale. *See* Clean Air Act § 246, 42 U.S.C. § 7586.

Finally, Petitioners term the present case of "national importance," asserting that, if the Fleet Rules are upheld, numerous jurisdictions could adopt their own, unique "emission requirements" that manufacturers would need to meet. Pet. at 21. Petitioners are wrong. First, as the district court and court of appeals held, the Fleet Rules are not vehicle emission "standards" preempted by Section 209(a). Pet. App. at 24a. Second, the rules do not require manufacturers to produce and sell *any* new vehicles. Pet. App. at 27a. Rather, they only require purchasers to choose from among the cleanest vehicles already manufactured.[1] As such, the Fleet Rules are fully consistent with Congress's principal purpose in enacting Section 209(a): to prevent state and local

1. Thus, any "Fleet Rules" that any other jurisdiction might conceivably adopt also would have to require the purchase of vehicles that manufacturers are already producing.

regulations from requiring manufacturers to produce a new type of vehicle.

In short, this case presents an ordinary question of statutory interpretation that the courts below decided easily and correctly on the basis of existing law. The Court should deny the Petition for a Writ of Certiorari.

BACKGROUND

A. The Clean Air Act.

The Clean Air Act ("CAA") places the primary responsibility for the prevention and control of air pollution on state and local governments. CAA § 101(a)(3), 42 U.S.C. § 7401(a)(3). As the Act makes clear, "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments." *Id.* While the CAA requires the federal government to set national air quality standards, CAA § 108(a), 42 U.S.C. § 7408(a), it mandates state and local governments to design and implement programs to achieve these standards. CAA § 110, 42 U.S.C. § 7410. To help ensure that the national air quality standards are met, Congress provided states and local governments with an exceptionally broad arsenal of regulatory tools. Under the CAA, those governments expressly retain almost unfettered authority to adopt or enforce "*any* standard or limitation respecting emissions of air pollutants" and "*any* requirement respecting control or abatement of air pollution." CAA § 116, 42 U.S.C. § 7416 (emphasis added).

Contrary to Petitioners' implication that states have no ability to control emissions from motor vehicles, this broad array of authority includes the power to enact state and local programs to reduce pollution from motor vehicles. For example, the CAA specifically authorizes state and local motor vehicle inspection and maintenance programs, as well as transportation control programs designed to reduce vehicle miles traveled. CAA § 182(b)(4), 42 U.S.C. § 7511a(b)(4); § 182(c)(5), 42 U.S.C. § 7511a(c)(5). Most significantly for purposes of the instant case, the CAA also authorizes states to adopt clean-fuel vehicle fleet rules, which have the same effect as the Fleet Rules in this case. CAA § 246, 42 U.S.C. § 7586.

There are only a few, specifically enumerated exceptions to the broad authority that the CAA gives to states and local governments. These exceptions include "certain"—*but not all*—types of regulation of moving sources of pollution: the adoption of "standards" relating to motor vehicle and aircraft emissions, and the regulation of fuel content. CAA § 116, 42 U.S.C. § 7416. As is relevant here, only the federal Environmental Protection Agency ("EPA") and the State of California are to set "standards" for the control of emissions from new motor vehicles or engines. CAA § 202(a), 42 U.S.C. § 7521(a); CAA § 209(b), 42 U.S.C. § 7543(b).[2] Section 209, 42 U.S.C. § 7543, prohibits other states and local governments from adopting or enforcing their own "standards." However, Section 177 of the CAA authorizes

2. Section 209(b) of the Act, 42 U.S.C. § 7543(b), authorizes California to adopt and enforce its own motor vehicle emission standards in recognition of the state's "unique problems" of air pollution and its "pioneering efforts" to control its particularly severe air quality problems. Pet. App. at 11a.

other states to adopt and enforce California's standards in place of the federal standards. CAA § 177, 42 U.S.C. § 7507.

Thus, the CAA authorizes the manufacture of only two types of motor vehicles: (1) vehicles that meet EPA's emission control standards, and (2) vehicles that meet California standards. Pet. App. at 12a-13a. In adopting Section 177, which confirms the two vehicle restriction established by Section 209, Congress expressed its intent to prevent states, other than California, and local governments from requiring "production of a third car." *See* Senate Comm. on Pub. Works, 103d Cong., 1 A Legislative History of the Clean Air Act Amendments of 1990, S. Doc. No. 103-38, at 1022 (1st Sess. 1993).

B. California's Vehicle Regulatory Program.

Pursuant to the authorization in Section 209(b) of the CAA, California's Air Resources Board ("CARB") has adopted motor vehicle emission standards setting the numerical limits on pollutants that can be emitted from vehicles produced for sale in California. Pet. App. at 13a. For light and medium-duty vehicles, CARB adopted several "tiers" of motor vehicle emission standards, each of which corresponds to a set of numerical emission levels for specific motor vehicle pollutants. Pet. App. at 13a-14a. CARB's regulations allow manufacturers to produce vehicles in any of four tiers as long as the manufacturers meet an overall average emissions level. *Id.* at 14. These regulations also require manufacturers to produce a progressively cleaner mix of motor vehicles over time. *Id.*

For heavy-duty vehicles, CARB has promulgated both generally applicable emission standards (Cal. Code Regs.

tit. 13, § 1956.8) and a more stringent set of numerical standards that urban transit buses must meet in the future (*id.* § 1956.1 *et seq.*) ("Urban Transit Bus Rule"). In addition to these stringent numerical emission standards, CARB's Urban Transit Bus Rule contains purchase requirements for so-called "fleet operators" which are like the purchase requirements found in the Fleet Rules. *Id.* § 1956.2. However, in contrast to the Urban Transit Bus Rule, the Fleet Rules do not require manufacturers to *produce* new transit buses and engines that meet strict, numerical emission "standards."

C. The Challenged Fleet Rules.

Pursuant to California state law, Respondent South Coast Air Quality Management District in 2000 adopted six rules governing the purchase and acquisition of vehicles by certain fleet operators. Pet. App. at 15a-16a. These Fleet Rules apply to fleets of fifteen or more urban buses, garbage trucks, airport transit vehicles, and street sweepers, among others. Pet. App. at 16a-19a. Generally, the Fleet Rules require fleet operators to acquire vehicles that either (1) are classified under CARB's regulations as a "low emission" or cleaner vehicle, or (2) operate on an alternative fuel. *Id.* Vehicles complying with these rules are already being made and are available for sale in California.

Significantly, the six Fleet Rules do not require manufacturers to make any vehicle that they are not otherwise manufacturing. Indeed, the Fleet Rules impose no requirements whatsoever on manufacturers. Also, each of the Fleet Rules contains an exception that allows fleet operators to purchase "higher emission" or diesel vehicles in the event that no certified alternative fuel vehicle exists for a particular application. *Id.* Thus, if manufacturers choose not to make a

particular CARB-certified clean vehicle, the Fleet Rules do not require its purchase.

D. The Rulings Below.

Petitioners challenged the Fleet Rules, claiming that Section 209 of the CAA preempts them. Pet. App. at 19a. The district court rejected Petitioners' claim, holding that the Fleet Rules "do not constitute unlawful standards 'relating to the control of emissions'" (Pet. App. at 24a) and are not preempted by § 209(a) of the CAA. Pet. App. at 27a. Contrary to Petitioners' assertion (Pet. App. at 3), the district court did not rest its decision on a "semantic distinction" between a purchase and a sale. Rather, the district court carefully reasoned as follows:

> The Fleet Rules accept as given the existing CARB vehicle standards; they merely require fleet operators to choose from among the least polluting of CARB-certified, available vehicles. The Rules impose no new emission requirements on manufacturers whatsoever, and therefore do not run afoul of Congress's purpose behind motor vehicle preemption: namely, the protection of manufacturers against having to build engines in compliance with a multiplicity of standards.

Pet. App. at 21a.

The court of appeals affirmed the district court's holding in a one-page decision which stated, "We affirm the decision of the district court for the reasons stated in its well-reasoned opinion. . . ." Pet. App. at 2a. Thereafter, the panel voted unanimously to deny the petition for rehearing, and no

member of the panel voted in favor of rehearing the matter *en banc*. Pet. App. 28a-29a. Moreover, no active judge in the circuit requested a vote on whether to rehear the matter *en banc*. *Id.*

REASONS FOR DENYING THE WRIT

I. THE "CIRCUIT SPLIT" POSITED BY PETITIONERS DOES NOT EXIST.

Attempting to attract this Court's attention, Petitioners have invented a nonexistent conflict between the decision of the court of appeals below and two other circuit court cases: *Association of Int'l Auto. Mfrs. v. Commissioner*, 208 F.3d 1 (1st Cir. 2000) ("AIAM"), and *American Auto. Mfrs. Ass'n v. Cahill*, 152 F.3d 196 (2d Cir. 1998). Pet. at 10-18. Petitioners create this alleged conflict by omitting key facts about the rules at issue in those decisions. When those omitted facts are supplied, it is apparent that the district court and the court of appeals properly concluded that neither decision controls the present case.

Most importantly, Petitioners are demonstrably wrong in asserting that these cases hold that CAA Section 209 preempts all state or local regulations whose purpose is "to effect a general reduction in emissions." Pet. at 10. The cases do not so hold, nor could they, given (1) the CAA's express declaration that states and local governments retain broad power to regulate air pollution (CAA § 116, 42 U.S.C. § 7416), and (2) the clear authorization in Section 246 for states to adopt clean-fuel vehicle rules (CAA § 246, 42 U.S.C. § 7586). Instead, these cases hold only that the CAA preempts state regulations requiring manufacturers to *produce and sell* new vehicles meeting emissions standards established by states other than California.

In *Cahill*, the Court addressed New York's attempts under CAA Section 177 to "opt-in" to the set of 1990 California vehicle regulations that included a zero emission vehicle ("ZEV") sales requirement. 152 F.3d at 199. The ZEV requirement mandated that, for certain model years, a percentage of all new vehicles produced and sold by manufacturers must be ZEVs. An earlier appellate decision held that New York had legally "opted-in" to the California standards. *Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Envtl. Conservation*, 17 F.3d 521, 533 (2d Cir. 1994). Subsequently, however, California abandoned its ZEV sales requirement for four model years, replacing the requirement with voluntary agreements with manufacturers. *Cahill*, 152 F.3d at 199.

The manufacturers then renewed their challenge to the New York vehicle regulations, claiming that the New York standards were no longer "identical" to those in California and thus no longer satisfied the "opt-in" provisions of Section 177. *Id.* New York responded by arguing that its ZEV requirement was not a preempted "standard relating to the control of emissions," but merely an "enforcement procedure." *Id.* The Second Circuit disagreed with New York, finding that because California's standards no longer mandated ZEV production, the New York regulation would require manufacturers to make a new "non-California," "non-federal" vehicle—in other words, a "third vehicle." *Id.* at 201. Thus, according to the *Cahill* Court, the New York regulation was a "standard" under Section 209(a). *Id.* at 200. As the Second Circuit explained:

> If other states may adopt a "California standard" that is not in force in California, the consequences will be wholly at odds with congressional intent.

> First, . . . the Manufacturers . . . might have to produce vehicles meeting the requirements of a single, much smaller state. Second, the Manufacturers might be required to comply with more than two–perhaps several–sets of emissions regulations. . . .

Id. at 201.

The Fleet Rules impose no such requirement—or any regulatory requirement whatsoever—upon vehicle manufacturers. They merely require fleet operators to purchase one of the cleaner models from among those motor vehicles *already certified by CARB for production in California*. Pet. App. at 21a-23a. Thus, as the lower courts found in the present case, *Cahill* is plainly distinguishable because it concerned a production and sales requirement, not a purchase restriction like the one in the Fleet Rules. Pet. App. at 22a-23a.

The second principal case cited by Petitioners, *AIAM*, raised a similar issue. Like New York, Massachusetts had "opted-in" to the 1990 California vehicle program, which included the ZEV sales requirement. *AIAM*, 208 F.3d at 3. However, California thereafter dropped the ZEV sales requirement and replaced it with non-regulatory "memoranda of agreement" between CARB and the vehicle manufacturers. *Id.* To avoid violating Section 209, Massachusetts then amended its ZEV sales requirement to incorporate those California memoranda of agreement. *Id.*

Following *Cahill*, the First Circuit found that the Massachusetts ZEV sales requirement was a preempted

"standard" under Section 209 precisely because it was a production requirement. *Id.* at 6. The court explained:

> 'Setting the link between the emission limit and the applicability of the limit to a particular number of vehicles is an inherent part of the standard setting process . . . If a *production requirement*, such as the ZEV mandate, is not considered part of the standard itself, then the compliance with a standard . . . would be disconnected from the obligation to build cars to meet the standard.'

Id. (quoting a federal EPA opinion letter) (emphasis added).

Unlike the ZEV requirements at issue in *AIAM* and *Cahill*, the Fleet Rules are not, in the words of the *AIAM* Court, a "production requirement" imposed directly on manufacturers. Whereas the regulations at issue in *AIAM* and *Cahill* directly commanded manufacturers to make vehicles meeting the ZEV standard, the Fleet Rules do not even regulate manufacturers, much less require them to make a new vehicle. As a result, both *AIAM* and *Cahill* are readily distinguishable from the present case.

In sum, the two cases cited by Petitioners do not even conceivably create a conflict in the opinions of the circuit courts of appeals.

II. THE LOWER COURTS' DECISIONS STRICTLY ADHERE TO THIS COURT'S WELL-ESTABLISHED PREEMPTION JURISPRUDENCE.

Next, Petitioners incorrectly claim that the lower courts' decisions conflict with this Court's "well-established jurisprudence" relating to preemption. Pet. at 18-19. Contrary to Petitioners' assertion, this Court has never held that preemption under Section 209(a) is "expansive." Rather, as the lower courts here properly recognized, the Court has made clear that preemption provisions must be narrowly and strictly construed, particularly where such provisions may infringe upon a state or local government's exercise of traditional police powers. Pet. App. at 7a-10a (quoting, e.g., *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645, 654 (1995) ("we have never assumed lightly that Congress has derogated state regulation, but instead have addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law"); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

Control of air pollution has long been a subject of the state and local police power. As this Court recognized over four decades ago, "Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power." *Huron Portland Cement Co. v. City of Detroit, Michigan*, 362 U.S. 440, 442 (1960). Moreover, in enacting the CAA, Congress made clear its intent to preserve this traditional authority for state and local governments. *See, e.g., Washington v. General Motor Corp.*, 406 U.S. 109, 114 (1972) (Congress finds that

"'the prevention and control of air pollution at its source is the primary responsibility of States and local governments'") (quoting predecessor to 42 U.S.C. § 7401); *see also* 42 U.S.C. § 7401(a) (same). Thus, in the present case, the district court and court of appeals properly followed this Court's jurisprudence in placing the "considerable burden" on Petitioners to prove that Congress's intent to preempt the Fleet Rules was "clear and manifest." *De Buono v. NYSA-ILA Medical and Clinical Servs. Fund*, 520 U.S. 806, 814 (1997); *Rice*, 331 U.S. at 230. Carefully considering the purpose of the CAA as well as its text, the lower courts properly found no preemption.

Petitioners now cite a single decision of this Court to claim a "consistency of holdings" that CAA preemption is broad. Pet. at 18-19 (citing *Washington v. General Motors Corp., supra*). In fact, the decision in *Washington* supports Respondents' position that preemption is narrow. The issue in *Washington* was whether this Court should exercise its original jurisdiction over that case. Because the case involved issues of air pollution, which "must be considered in the context of localized situations," the Court declined jurisdiction, thus affirming the importance of state and local control over air pollution. 406 U.S. at 116. The Court mentioned Section 209(a) only in passing, recognizing it as one of the limited exceptions to state and local regulatory control.[3] *Id.* at 114. In the present case, however, no one disputes that Section 209(a) preempts *certain* state and local actions. Rather, the issue here is whether the Fleet Rules fall within Section 209 preemption. The *Washington* decision did not address that issue, let alone hold that Section 209(a) should be construed broadly, as Petitioners now imply.

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3. *Washington* concerned the predecessor statute to the Act.

Nor do the lower courts' opinions in the present case "flatly conflict" with this Court's preemption decisions interpreting statutes that contain the phrase "relating to." Pet. at 19-20. While Petitioners claim that *Morales v. Trans World Airlines, Inc.*, *supra*, dictates a broadly preemptive reading of this phrase (Pet. at 19), Petitioners conveniently ignore the line of post-*Morales* cases in which this Court all but abandoned its focus on the "relating to" language. *See, e.g.*, *Travelers*, 514 U.S. at 655 ("If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for really, universally, relations stop nowhere.") (internal quotations omitted); *California Div. of Labor Standards Enforcement v. Dillingham Constr. N.A., Inc.*, 519 U.S. 316, 325 (1997) ("an uncritical literalism" in applying the "relates to" language "offer[s] scant utility in determining Congress' intent") (citing *Travelers*, 514 U.S. at 656). As Justice Scalia, the author of *Morales*, explained in *Dillingham*, "applying the 'relate to' provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else." 519 U.S. at 335 (Scalia, J., concurring).[4]

4. Even if *Morales* were applied here, it would not support a finding of preemption. The preemption provision at issue in *Morales* was much broader than CAA Section 209(a). It prohibited not only "standards" but also any "law, rule, regulation, standard, *or other provision having the force and effect of law* relating to" the preempted subject matter. *Morales*, 504 U.S. at 383 (emphasis added). By contrast, Congress explicitly limited the scope of Section 209(a) preemption to "standards" relating to the control of emissions. Thus, it is the meaning of the word "standards," not the term "relating to," that is central to this case.

Petitioners also append and rely on the Amicus Curiae brief of the United States in *Central Valley Chrysler-Plymouth, Inc. v. Michael* (Cont'd)

The post-*Morales* cases instead start from the strong presumption that Congress did not intend to preempt state law. They then focus on Congress's intent, as expressed by both the language and objectives of the statute as a whole, to determine the scope of preemption. *See, e.g.*, *De Buono*, 520 U.S. at 814; *Travelers*, 514 U.S. at 654-55; *Dillingham*, 519 U.S. at 325, 329. Far from taking what Petitioners claim is a "freewheeling" approach to preemption (Pet. at 19-20), the district court and court of appeals below carefully and properly applied these factors to hold that the clean-fuel vehicle purchase requirements of the Fleet Rules are not preempted. Pet. App. at 20a-24a.

III. THE LOWER COURTS' DECISIONS PRESENT NO ISSUE OF NATIONAL IMPORTANCE.

Contrary to Petitioners' position, not every case involving possible preemption presents an issue of national importance appropriate for review by this Court. Petitioners argue that the Ninth Circuit's holding would create national "chaos" in vehicle manufacturing by encouraging the adoption of a

(Cont'd)
P. Kenny, No. 02-16395 (9th Cir.), to argue that *Morales* applies here. However, the *Central Valley* case is not even about the CAA; rather, it concerns preemption under the Energy Policy and Conservation Act, 42 U.S.C. § 32901, *et seq.* Moreover, like the preemption provision at issue in *Morales*, that statute more broadly preempts any "law or regulation." While Petitioners apparently have appended this brief solely to imply that the United States agrees with their position, the United States chose not to file a brief in either the district court or the court of appeals below. In short, the *Central Valley* case, and the United States' position in that case, is irrelevant to the present petition.

multitude of "emission requirements" throughout the country. Pet. at 21-22. However, the Fleet Rules plainly do not run afoul of Congress's intent in enacting Section 209(a), which, as the lower courts correctly held, is "the protection of manufacturers against having to build engines in compliance with a multiplicity of standards." Pet. App. at 21a. Thus, purchase requirements like the Fleet Rules do not create emission standards under Section 209(a). Pet. App. at 21a-24a.

Furthermore, Petitioners' hyperbole about "chaos" overlooks the fact that, as discussed above, Congress not only foresaw purchase restrictions like these, it affirmatively authorized them. CAA § 246, 42 U.S.C. § 7586. As the district court astutely observed, "It is not rational to conclude that the CAA would authorize purchasing restrictions on the one hand, and prohibit them, as a prohibited adoption of a 'standard,' on the other." Pet. App. at 23a. Nor does Petitioners' complaint that "every state" will now adopt its own "unique" versions of the fleet rules (Pet. at 21-22) bear any relation to reality. While the Fleet Rules have been in place for nearly three years, no other state or local government has adopted similar regulations.[5]

Finally, and most remarkably, Petitioners profess concern that state and local governments will "require the purchase of the *highest emitting* certified vehicles" as a result of the decision. Pet. at 23 (emphasis added). Petitioners need not worry. In upholding the Fleet Rules, the district court and

5. As noted above, even if every state did adopt its own version of the Fleet Rules, this adoption still would not undermine Congress's preemptive intent. If Petitioners wish to change the law to protect themselves from burdens indirectly resulting from such regulations, their remedy lies with Congress, not with this Court.

Ninth Circuit emphasized that the core purpose of the CAA is to *reduce* air pollution. Pet. App. at 10a. Accordingly, the lower courts' rulings in the present case would not support a hypothetical regulation that increases pollution, as such a regulation would undermine, rather than further, this core purpose. In any event, neither of Petitioners' unrealistic hypothetical scenarios—multiple fleet rules or a rule mandating dirtier vehicles—is before this Court.

CONCLUSION

Because the lower courts' opinions are consistent with this Court's precedent on preemption and do not create a split among the circuits, Respondents respectfully request that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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